

RESTRICTED

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
13 November 1947

UNITED STATES OF AMERICA VS MASAJI TAKAKU

Review of the Staff Judge Advocate

1. The attached record of trial of Masaji Takaku at Yokohama, Japan from 1 August 1947 to 4 August 1947, by a Military Commission appointed by paragraph 14, Special Orders No. 174, Headquarters Eighth Army, United States Army, dated 28 July 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Masaji Takaku	DATE OF CONFINEMENT: 27 February 1947
AGE: Twenty-four (24) years	DATE OF ARRAIGNMENT: 1 August 1947
RESIDENCE: Tochigi Prefecture, Nasu-gun, Yatsukami-mura, Oaza Sema Hara #51	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 1 August 1947 to 4 August 1947
RELATIVES: Wife, Shizuko Takaku; Mother, Hatsu Takaku; Brother, Mitsuo Takaku; Sisters, Hisa Takaku, Fuyo Takaku, Masako Takaku; one child	DATE OF SENTENCE: 4 August 1947
EDUCATION: Higher Primary School, eight years	SENTENCE: CHL for ten (10) years
VOCATION: Agriculture	
MILITARY CAREER: Entered Japanese Navy 25 September 1944, discharged 2 September 1945; able-bodied seaman	
CLEMENCY RECOMMENDED BY COMMISSION: No.	

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

<u>Charges and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Accused, a member of the Japanese Navy, at the times and places set forth in the attached specifications, and at a time of war between the United States and Japan, violated the Laws and Customs of War.	NG	G	Yes
Sp 1: On or about 3 August 1945, at Ofuna PW Camp, Ofuna, Japan, accused did willfully and unlawfully mistreat N. D. Collier, an American PW, by beating him into unconsciousness.	NG	G	Yes
Sp 2: On numerous occasions in or about July 1945, at Ofuna PW Camp, Ofuna, Japan, accused did willfully and unlawfully	FG	G	Yes

(p 1, TAKAKU Case 205)

mistreat and abuse Billy D. Holt, an American PW, by beating him.

Sp 3: On several occasions between 14 July 1945 and 4 August 1945, at Ofuna PW Camp, Ofuna, Japan, accused did willfully and unlawfully mistreat and abuse Joel T. Wasson, an American PW, by beating him.	NG	G	Yes
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Sp 4: On or about 14 July 1945 at Ofuna PW Camp, Ofuna, Japan, accused did willfully and unlawfully mistreat and abuse Joel T. Wasson, Robert L. Miller and Walter G. Salberg, American PWs, by beating them.	NG	G	Yes
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Sp 5: Between 1 March 1945 and 1 September 1945, at Ofuna PW Camp, Ofuna, Japan, accused did willfully and unlawfully mistreat Max L. Parnell, an American PW, by beating and otherwise abusing him.	NG	G	Yes
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Sp 6: On or about 31 July 1945 at Ofuna PW Camp, Ofuna, Japan, accused did willfully and unlawfully mistreat and abuse M. C. Sheridan, an American PW, by beating him.	NG	G	Yes
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Sp 7: On numerous occasions between 1 January 1945 and 1 September 1945, at Ofuna PW Camp, Ofuna, Japan, accused did willfully and unlawfully mistreat numerous American and Allied PWs by beating and kicking them and forcing them to maintain painful postures for long periods of time; and by otherwise abusing them.	NG	G	Yes
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3 Summary of Evidence:

a. For the Prosecution:

The Ofuna Camp, in the present case, was an interrogation camp for prisoners who were fresh from combat and they were detained there as long as the Japanese thought they might supply them with any military intelligence (R. 6).

As to Specification 1: "Lieutenant Collier, prisoner at the camp, states in his affidavit that accused walked as a guard past his cell. There was a small window and it was propped open the first day he was confined there. Collier looked out the window to watch some of the prisoners during their exercise period in the compound. They had received no instructions that this was forbidden. Accused saw him and entered his cell. He had a small club similar to an American policeman's "billy". With this he struck Collier three times, once on the shoulder and twice on the side of his head.

This rendered him unconscious. When he revived he was lying on the floor of his cell and accused had departed (Ex. 6).

As to Specification 2: Accused administered frequent beatings to prisoner Holt with his fist for a period of about two weeks, commencing with the day of his arrival at the camp. Those beatings were without provocation (Ex. 11).

As to Specification 3: On three other occasions accused struck prisoner Wasson four blows with his fist on the chin and face. He was apparently so struck because of his inability to understand his instructions given in Japanese (Ex. 19).

As to Specification 4: Accused and two other guards beat prisoners Wasson, Miller and Salberg with a pole or stick about four feet long and three inches in diameter, which weapon was called a "mimbo" (sic). The beating consisted of three hits across the back. There was no apparent reason for this, but the affiant (Wasson) believed that it was to instill discipline (Ex. 19).

As to Specification 5: Accused struck prisoner Parnell ten blows across the buttocks with a bamboo pole. The pole was about four feet long and two inches in diameter and sufficient force was used to split it. This beating "raised big whelps (sic) and blue spots". The reason for this abuse was that accused did not want Parnell to relieve himself about four o'clock in the morning (Ex. 13).

As to Specification 6: Accused beat prisoner Sherdon about the buttocks and legs with a Japanese club known as a "bimbo" (sic), because he had taken too much time in making his bed (Ex. 16).

As to Specification 7: Accused constantly beat the prisoners with his fists and a club. The blows were directed about the head and all parts of the body. He also kicked them. At times, as individual punishment, he stopped their food rations or put them on half rations. On one occasion he participated in the causing of prisoners to assume a half-crouching position with their arms over their heads until they collapsed. Immediately following this they were forced to assume a "push-up" position and were beaten by accused and others. He slapped prisoners for looking out of their cell windows and beat them for talking to each other (Ex. 2-5, 8-10, 12, 14, 15, 17, 18, 20-23).

b. For the Defense:

Accused, after having been sworn, took the stand and testified in his own behalf. The gist of his pertinent testimony is as follows: He was a guard at Ofuna Camp from 19 May 1945 until the termination of hostilities. He did not strike, kick or mistreat a prisoner by the name of Collier (R. 14). He had warned prisoner Holt not to speak to other prisoners. Subsequently he discovered him talking to another and he slapped him two times with his open hand (R. 14-15). He knew no prisoners by the names of Wasson, Miller, Salberg, Parnell or Sherdon. He denied kicking prisoners, beating them with a Kendo stick, participating in forcing them to crouch with their hands above their heads and slapping and kicking them while in this position (R. 15). Under cross-examination he stated that he was not instructed or ordered to mistreat prisoners. Holt was the only prisoner he discovered breaking regulations (R. 16).

4. Opinion:

The record is legally sufficient to support the findings of the Commission. Each allegation of the charge and specifications was substantiated by ample and competent evidence. The Commission

was constituted by proper authority and had jurisdiction of accused and of the offenses alleged.

The prosecution introduced evidence by means of affidavits of former prisoners of war who were interned at the camp and were in a position to know the facts of the matters in issue. From such the guilt of accused was firmly established.

The complete record shows that accused had a fair trial and that he was represented by competent counsel. He took the stand and testified in his own behalf. A careful scrutiny of the entire record fails to reveal any error which injuriously affected the substantial rights of accused or any failure to accord him a fair trial in every respect. The evidence supports the findings. There is no evidence that accused was not sane at the time the alleged acts were committed and at the time of trial.

5. Recommendations:

The Commission sentenced accused to confinement at hard labor for ten (10) years. The sentence is legal.

There are no letters of clemency from any members of the Commission or from others.

It is considered that this sentence for seven specifications of brutalities is inadequate. However, in order that accused might not escape some punishment for his crimes, it is recommended that the sentence be approved.

Accused was confined 27 February 1947, went to trial 1 August 1947 and was sentenced 4 August 1947. In compliance with established policy, due to the length of time accused has spent in confinement prior to sentence, it is recommended that two (2) months of the sentence to confinement at hard labor be remitted. Sugamo Prison, Tokyo, Japan, is the proper place of confinement.

6. Action:

A form of action designed to carry this recommendation into effect is attached hereto.

PAUL E. SPURLOCK
Reviewer
Judge Advocate Section

I concur: Compelling proof of allegations in seven specifications charging responsibility for war crimes such as those established in this case demands a sentence greatly in excess of ten years. Nevertheless, pre-trial confinement is in no way to be considered as confinement served in expiation for offenses of which an accused is later convicted. Therefore a reviewing authority should consider such restraint entirely separately from that adjudged by a commission. The blackest rogue is entitled to an early trial under the enlightened rules of civilized nations. When trials are postponed, as this one was, because of the great number of those awaiting justice, fair allowances should be made for undue pre-trial confinement regardless of the inadequacy of a sentence. This is all the more true since commissions are instructed that pre-trial confinement is not to be considered in adjudging sentences.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate